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OFFICE OF PETITIONS

In re Application of
Bengtsson et al.
Application No. 10/628,745
Filed: July 28, 2003
Attorney Docket No. 60000500-1005

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ON PETITION

This is a decision on the petition under 37 CFR 1.181 to withdraw the holding of abandonment, filed July 20, 2006.

The petition to withdraw the holding of abandonment is **Granted**.

This above-identified application became abandoned for failure to file a response to a Notice to File Missing Parts mailed on May 26, 2004. The Notice to Missing Parts set an extendable two (2) month period for reply. No timely request for extension of time was obtained under the provisions of 37 CFR §1.136(a). A reply was received on June 23, 2004. A Notice of Incomplete Reply was mailed July 7, 2004, the period of reply continued to run from the original Notice. Accordingly, this application became abandoned on July 27, 2004. A Notice of Abandonment was mailed on July 6, 2006.

Petitioner contends that a reply to the Notice of Incomplete Reply mailed on July 7, 2004, was sent via facsimile on July 26, 2004. As evidence, petitioner has submitted a copy of the reply which contains a certificate of transmission dated July 26, 2004 pursuant to 37 CFR 1.8. Petitioner has also provided a copy of the sending unit's report which shows transmission was completed on July 26, 2004.

The response submitted July 26, 2004 has not been located in the Office, however, in view of the evidence submitted, the response is deemed timely.

The Notice of Abandonment is hereby vacated and the holding of abandonment is withdrawn.

However, it should be noted that petitioner has failed to establish that a fully executed oath or declaration was filed on July 28, 2003. The postcard submitted merely shows a declaration was submitted on July 28, 2003. The Office was in receipt of a declaration executed by Cheung on July 28, 2003. A declaration executed by Bengtsson was missing. The postcard fails to provide the number of pages of declaration submitted.

The USPTO will stamp the receipt date on the postcard and place it in the outgoing mail. A postcard receipt which itemizes and properly identifies the items which are being filed serves as prima facie evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO. The identifying data on the postcard should be so complete as to clearly identify the item for which a receipt is requested. For example, the postcard should identify the applicant's name, application number (if known), confirmation number (if known), filing date, interference number, title of the invention, etc. The postcard should also identify the type of paper being filed, e.g., new application, affidavit, amendment, notice of appeal, appeal brief, drawings, fees, motions, supplemental oath or declaration, petition, etc., and the number of pages being submitted. If a new application is being filed, all parts of the application being submitted should be separately listed on the postcard, e.g., the number of pages of specification (including written description, claims and abstract), number of claims, number of sheets of drawings, *number of pages of oath/declaration*, number of pages of cover sheet (provisional application). See MPEP 503.

Accordingly, the Office was correct in charging the surcharge for the late submission of the declaration

This application is being forwarded to the Office of Initial Patent Examination for further processing

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3215.



Charlema R. Grant

Petitions Attorney

Office of Petitions